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CURRENT TOPICS

Royal Commission on Divorce Law

THE majority obtained for a Second Reading of the Matrimonial Causes Bill placed the Government in some sort of quandary. Having promised a Royal Commission if the Bill were withdrawn, the ATTORNEY-GENERAL felt obliged to argue that the Government would have to reconsider whether a Royal Commission would serve a useful purpose if the Bill were proceeded with. The unsoundness of this argument is too apparent for comment, the verdict of the House, 131 votes to 60, being a sufficient answer, and on 14th March the PRIME MINISTER announced that after all a Royal Commission would be appointed to review the law relating to divorce. On the narrower field opened by the Bill itself, and without repeating the arguments on one side or the other, we cannot withhold approval from the two conditions proposed for a divorce on the ground of seven years' separation, viz., that there is no reasonable prospect of reconciliation and secondly that a petitioning husband, who is legally obliged to maintain his wife and the children of the marriage, if any, satisfies the court that he has fulfilled his obligations in this respect during the seven years or that he will make good his default according to the directions of the court. But it is to be hoped that when the membership and terms of reference of the Royal Commission are announced its scope will not be artificially restricted, but will be drawn in wide enough terms to enable a comprehensive inquiry to be made into what has become one of the major social problems of our time.

The Police and Inquests

IN Northampton there is evidence of a clash of opinion between the chief constable and the legal profession on the subject of the right of the former to appear at inquests. We referred to this matter in our issue of 3rd March (*ante*, p. 130). The chief constable at a recent inquest was representing the police and questioning witnesses. A solicitor objected to a question put to a police witness, which, he suggested, was based on surmise. The chief constable replied: "While I am silent in the police court, I will not be silent here. I object to this kind of behaviour by the legal profession. If I have any more, steps will be taken." A valued correspondent who is a solicitor with experience of coroners' inquests writes to us under the *nom de plume* of "Legis": "I have on various occasions taken exception to the questioning of witnesses by the police at an inquest, which always appears to be directed to find some evidence upon which to base a prosecution, particularly where the inquest arises out of a motor accident However, it would be interesting to know what were the steps envisaged by the chief constable of Northampton to stop the legal profession objecting to questions." No doubt the chief constable will enlighten us in due course.

Change of Infant's Name by Deed Poll

FROM 20th March it will no longer be necessary to obtain the consent of the Master of the Rolls to the enrolment in

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the Central Office of a deed poll evidencing the change of name of an infant. This requirement was first imposed two years ago by reg. 8 of the Enrolment of Deeds (Change of Name) Regulations, 1949, which also provided that the application for enrolment must be supported by such evidence as the Master of the Rolls might require, including in particular evidence that the change of name is for the benefit of the infant. The Enrolment of Deeds (Change of Name) (Amendment) Regulations, 1951 (S.I. 1951 No. 377 (L.1)), substitute a new reg. 8 which merely requires that the application for enrolment must be made by a parent or legal guardian of the infant and that, where the infant is over sixteen years of age, his signed consent must be endorsed on the deed and duly witnessed. The time and cost involved in such applications appear likely to be somewhat reduced by this simplified procedure, as the number of documents to be prepared by the applicant's solicitor will be materially fewer and when completed they can at once be presented for enrolment without the necessity of awaiting the leave of the Master of the Rolls.

Justice in the County Palatine

Six hundred years ago, on 6th March, 1351, Edward III made Henry of Lancaster the first Duke of Lancaster, and Lancashire a County Palatine. A County Palatine was a county where all or most of the royal powers had been devolved so as to strengthen local administration in a distant area when communications were slow. The effect of a grant of palatine powers was to exclude the King's writ and the King's judicial officers from the territory. The duke appointed his own judges and justices, his sheriff and other officers, and writs in the County Palatine ran in his name. By the Judicature Act of 1873 Lancashire's Courts of Crown and Common Pleas were absorbed into the new Supreme Court. But the Chancery Court of the palatinate remained and dispenses efficient justice to this day. Moreover, in Lancashire the sheriff, county court judges, and other holders of judicial office are appointed through the Duchy. One of the most important duties of the Chancellor of the Duchy is the appointment of justices of the peace in the county and the thirty boroughs or cities which have a separate commission of the peace. The Royal Commission on Justices of the Peace acknowledged the efficiency with which this important duty is performed. In extending sexcentenary congratulations to the County Palatine we may reflect that it is one of the glories of English history that nothing that is good is cut away or discarded even if it is old.

The Building Societies

ESTIMATES recently published in the *Building Societies' Gazette* show that the amount advanced on mortgage last year by the 831 societies in Great Britain was £273m., or only £3m. below the high record of the previous year. The bulk of this total was in respect of "second-hand" property. In the case of the Abbey National society, Sir HAROLD BELLMAN said at a meeting on 4th March that the great bulk of the £29m. advanced on mortgage last year was in respect of individual advances which did not exceed £2,000. Small and large savings, chiefly small, invested in shares and deposits of the societies increased by £112m. during 1950 to a total of £1,170m. This makes a total increase in the savings entrusted to the movement of £285m. during the last three years.

Factory Accidents

THE annual report of the Chief Inspector of Factories for 1949 (Stationery Office, 4s. 6d.) states that the number of

accidents notified in 1949 was 192,982, of which 772 were fatal. The year before there had been 201,086 accidents, including 861 which were fatal. In the five years 1944-49, accidents to boys dropped from more than 24,000 to 9,100, and accidents to girls fell from nearly 8,500 to 3,500. Lack of supervision and instruction was still the real cause of most of the accidents to young workers in 1949, though inexperience, curiosity, lack of self-discipline, and "sky-larking" were other contributory causes. There were cases of accidents where machinery guards are suitable for adults but do not exclude the slender fingers of boys and girls. It is gratifying to learn from the report that many employers are beginning to go beyond the legal minimum standard of safeguards and amenities, and employers and workers are giving more attention to the treatment of minor accidents and the provision and use of washing and first-aid facilities.

Ischial Callosities and the Law

LORD WEBB-JOHNSON, former President of the Royal College of Surgeons, has started a hare in his letter to *The Times* of 7th March by complaining of the "serious discomfort" of litigants who have to sit, possibly for several successive days, on the "antiquated perches" provided in the Royal Courts of Justice. He wrote: "It is true that barristers and solicitors have to put up with similar hard benches, but at least they are paid for doing so. With long practice, moreover, they may find some way of securing a moderate degree of comfort or acquire immunity from damage by developing ischial callosities like baboons, who sit on barren rocks. I feel sure, however, that a little upholstery would be welcomed by all." To a Press correspondent he defined "ischial callosities" as "hard toughened skin on the seat which will enable one to sustain this torture." No doubt it is torture to some to sit on a hard seat. Apart from the testimony of Lord Webb-Johnson there is that of Grimble, an Aldous Huxley character, who invented Grimble's pneumatic trousers to deal with the problem. *Per contra*, there are those, lawyers and non-lawyers, with "ischial callosities" and without them, who can sit comfortably almost anywhere. If those who cannot are rude to those who can, those who can are too refined to descend to the *tu quoque* form of argument in order to liken those who cannot to zoological specimens.

Recent Decisions

In *Yates (Inspector of Taxes) v. Starkey*, on 5th March (*The Times*, 6th March), the Court of Appeal (the MASTER OF THE ROLLS and JENKINS and HODSON, L.JJ.) held that, where an order of the Divorce Court directed a respondent husband to pay to his wife to whom the custody of their three children had been given an annual sum of £100 less tax in trust for each of the children, a trust was created by the order for each child and a settlement was also created within s. 21 of the Finance Act, 1936, and the income had therefore to be treated for the purpose of tax as the husband's income, and he was entitled to claim the child allowances for income tax purposes.

In *Coutts and Co. v. Coulthurst and Another*, on 7th March (*The Times*, 8th March), the Court of Appeal (the MASTER OF THE ROLLS and JENKINS and HODSON, L.JJ.) held that a trust for the benefit of widows and orphans of deceased officers and ex-officers of a bank who were "most deserving" of assistance by reason of financial circumstances was a valid charitable trust as being for the relief of poverty.

PLANNING AND NUISANCE

SOME time ago the Northamptonshire County Council received some unenviable notoriety in the national Press because in giving a planning permission under the Town and Country Planning Act, 1947, to a Mr. Moss to ply his trade, that of the modern type of village blacksmith, they had restricted his working hours so that he could function only between 7.30 a.m. and 6.30 p.m. in winter, and 7.30 a.m. and 8.30 p.m. in summer, with no Sunday work. On appeal, the Minister of Town and Country Planning proved more lenient than the county council and Mr. Moss is now only prevented from *hammering* after 8 p.m. on weekdays or at all on Sundays.

The Press severely criticised the council for damping the ardour of someone who wished to secure maximum production in his particular line in these difficult times, when everyone is officially encouraged to work hard. But the council were doing their best to protect those living in the neighbourhood from disturbance at all hours of the day and night; they were using planning law as an aid to the law of nuisance.

Planning law and the law of nuisance spring from the same legal maxim—*Sic utere tuo ut alienum non laedas*. The basis of planning law is good neighbourliness, though its restrictions now go far beyond this. Thus, it is not unnatural that, when trouble arises between neighbours, the injured one should turn to the local planning authority for protection. It is very much easier and very much cheaper for him to set the authority in motion than to pursue his own remedies in the courts. In fact, planning authorities are constantly faced with being arbiters in matters of nuisance which might more properly be dealt with in the courts.

It is the purpose of this article to examine the planning remedies which may be invoked in substitution of the ordinary legal remedies in the courts for nuisance and other injury to property and its occupation.

First, it has to be remembered that a planning authority are powerless to intervene where the action complained of does not constitute development. Thus, the Minister says in para. 4 (ii) of Circular 67 that he is advised that "in considering whether a change is a material change, comparison with the previous use of the land or building in question is the governing factor, and the effect of the proposal on a surrounding neighbourhood is not relevant to the issue." And the following is an extract from an appeal decision by the Minister (Sixth Bulletin of Selected Appeal Decisions, VI/27):—

"A further consideration which had exercised the minds of the council and given rise to complaints by neighbouring residents was that of disturbance caused by the barking and yapping of the dogs. The Minister took the view that the amount of noise created by the dogs might be material evidence of the extent of the business which was being carried on and the degree to which the residential character of the business (*sic*) had been departed from; but that planning permission was not to be used as a substitute for the remedies which were available to neighbours under the law of nuisance, or the test of nuisance to be substituted for the test of material change."

See more fully on this an article at 93 SOL. J. 733.

Again it may be annoying to an owner, particularly of a small property, if his next-door neighbour "garages" his car in the open in the front garden; this practice, if extensive, might lead to a very ragged appearance in the neighbourhood, but it is not development, nor is it proper to endeavour to control it by refusal of vehicular access through the front fence if this refusal is not justified in highway interests.

If the cause of the trouble is not development, the aggrieved owner will have to rely on his remedy in the courts for nuisance or breach of restrictive covenants.

If the cause of the trouble is development, it may well be that it is permitted development within the Town and Country Planning (General Development) Order, 1950. Thus, the erection of a large shed in the next-door garden, however unsightly or whatever its size, is permitted development if it does not exceed 10 feet in height, 12 feet if it has a ridge, and is for a purpose incidental to the enjoyment of the dwelling-house. Similarly the erection of a cowhouse or piggery in a field adjoining residential development will often be permitted development (Class VI), or an extension to a factory (Class VIII) which may interfere with the view from a window or the light entering it. In fact, there are many forms of permitted development which may in particular circumstances be objectionable to neighbours. In all these cases the local planning authority are unlikely to be of much help, even assuming that the development is bad planning, which, as mentioned later, may not always be the case.

If they can catch the developer before he starts the development they may be able to stop it by making a direction, to be approved by the Minister, or the Minister may make one himself, under art. 4 of the order, removing the application of the class of permitted development concerned from the particular property, which means that the prospective developer would then have to apply for planning permission, which could be refused. This might result in a liability on the authority for payment of compensation under s. 22 of the 1947 Act for abortive expenditure, but probably this, if any, would be small.

In the more likely event of the development having already been carried out, the authority could only remove or discontinue it by making an order to be confirmed by the Minister, under s. 26 of the 1947 Act, in which case substantial compensation might well be payable. It is improbable that, unless a particularly strong case existed for removing or discontinuing the development, the authority would take this action, or the Minister would support them if they did.

In the case of permitted development, therefore, an owner will generally have to rely on any remedy he may have in the courts.

Thirdly comes the case where the development concerned requires planning permission to be granted on application before it can be carried out.

If the development has started and no permission for it has been granted and no application for permission is pending, an approach to the local planning authority will probably result in their taking the matter up with the developer and, if necessary, taking enforcement proceedings against him. The action of the authority may result in an application to them for permission for the development, and, as will be seen later in this article, it does not necessarily follow that the application will be refused just because the development is damaging to a neighbour.

In many cases, however, where a neighbour hears of development likely to affect his land adversely, or sees it starting, an application for permission may already have been made and perhaps already granted.

There is nothing in the 1947 Act or any order or regulation made under it which requires a local planning authority to give to neighbouring owners notice of an application received for planning permission, though sometimes, where the development is likely to be objectionable, an authority may do this of their own volition; this, however, is very much

the exception to the general rule. While authorities are not required to give notice to adjoining owners, and in practice very rarely do, the Minister, if he directs a local inquiry, as distinct from a private hearing, into a planning appeal, always as a matter of practice requests the authority to give notice to adjoining owners who may be affected by the appeal.

A neighbouring owner who is given notice of an inquiry will be able to address the inspector after the appellants and respondents have stated their case. Very often neighbouring owners address letters to the appellants or respondents and these are handed in at the inquiry, or they write to the inspector or the Ministry direct. Such letters are taken into consideration, but, if the owner has serious objection, it is advisable for him to attend or be represented.

If the planning authority themselves grant permission, and consequently there is no appeal, the first thing the neighbouring owner may know about it is when he sees the development being started. A neighbouring owner has no right of appeal against a grant of permission. If, therefore, he hears that an application in respect of development to which he objects is before an authority, he should write immediately to the clerk or the planning officer to the authority setting out his objection.

If an owner suspects that an application is, or will shortly be, before an authority but is uncertain as to this or of the precise nature of the application, he should inquire of the authority. Particulars of applications are not confidential as between the applicant and the authority. By art. 12 (4) of the General Development Order, 1950, particulars of an application have to be entered in the register kept under s. 14 (5) of the 1947 Act for public inspection within fourteen days of its receipt. It is unlikely that a decision on an application will have been made within fourteen days, so there will still be time in many cases to make representations after inspection.

If it is found that an authority have given permission for development to which a neighbour objects, the latter's only course is to try to have proceedings for the revocation of the permission under s. 21 of the 1947 Act instituted. If the authority have given the permission on a misunderstanding they may themselves be willing to revoke the permission. Readers may remember the case in a well known seaside town where the authority granted permission for development without realising that it would block the sea view from other properties, the owners of which promptly objected; in this case, however, after debate the authority did not revoke. In other cases the decision may have been made by a county district council acting under delegated powers on behalf of a county council; here it may be advisable to approach the county council to find out whether they would revoke the permission given on their behalf.

In every case of this nature the approach should be made with the least possible delay as, if a change of use is

commenced or the erection of the development is completed, it is too late to take action under s. 21, and action can then only be taken under s. 26; in any event delay may occasion payment of increased compensation under s. 22.

It must be realised that it is generally more difficult to secure revocation of a permission already given than to secure a refusal in the first place. Besides writing immediately to the clerk or planning officer to the appropriate authority, it will also be desirable to secure, if possible, the support of the elected member of the authority for the ward or division in which the property is situated.

If the authority are unwilling to revoke, the final avenue is to write to the Ministry with a view to the Minister's directing the authority to make, or himself making (s. 100 (2)), the necessary order under s. 21, or, if appropriate, s. 26. A very strong case will be needed if this course is to be successful, and it might well be advisable to enlist the support of the local Member of Parliament.

If it is too late to make a revocation order under s. 21, the only remaining course is to take similar steps to secure an order under s. 26 for the discontinuance of an authorised use or the removal of authorised development. The financial consequences of a s. 26 order are, however, such that only very rarely will one be made.

In considering all these cases, it must always be remembered that *sic utere tuo*, etc., is not the only maxim on which planning is based; there is another, *salus populi est suprema lex* (see the Final Report of the Uthwatt Committee on Compensation and Betterment (Cmd. 6386), p. 20), and it may well be that good planning may be detrimental to property, as where a town plan encourages the expansion of industry into an area where there are existing private residences; this kind of case will arise very often in the older areas of towns where there are reconstruction proposals.

While most authorities will regard sympathetically any representations by neighbours, as also will the Minister, they have to consider the interests of the area as a whole and public need, and may be justified in the general interest in granting permission for development which is annoying to neighbours or is in breach of restrictive covenants affecting the freehold, or of a tenant's covenants with his landlord. Such a grant of permission leaves the objector to enforce his rights in the courts.

Any owner selling off property in the neighbourhood of property which he retains will be well advised to secure suitable restrictive covenants for the benefit of the retained property and not to rely on planning control or zoning.

In short, an approach by an aggrieved owner or occupier or landlord to a planning authority may result in satisfaction at no cost and little trouble to himself, but the law and practice of planning are not coincident with those relating to nuisance, restrictive covenants and landlord and tenant, and he may find himself left to his remedies in the courts.

R. N. D. H.

Costs

FROM time to time questions arise with regard to the incidence of costs in connection with appeals, and we propose touching upon some of these questions now.

It matters little whether the appeal is from a master's order or is an appeal to the Court of Appeal, the principles are much the same. It will be remembered that Ord. 65, r. 1, of the Rules of the Supreme Court provides, in effect, that subject to the Act, which now means the Supreme Court of Judicature (Consolidation) Act, 1925, and the Rules of the

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Supreme Court, the costs of and incident to all proceedings in the Supreme Court shall be in the discretion of the court or judge. Consequently, although there may be some fairly well defined rules on which costs are awarded, whether in the lower court or the Court of Appeal, the court or the judge is vested with absolute discretion, which means that costs may even be awarded to the unsuccessful party: see *London Welsh Estates, Ltd. v. Phillip* (1931), 144 L.T. 643, where an official referee had awarded the costs to the defendant in a

case in which the plaintiff had taken money out of court which had been paid in with a denial of liability; and the same principle will apply so far as the Court of Appeal is concerned: see *Simpson v. Crowle* [1921] 3 K.B. 243, where the plaintiffs in a county court action who appealed and succeeded to the extent of gaining an advantage which they had not had under the county court judgment were deprived of the costs of the appeal. The decision in this case was given on a point which could have been taken in the court below, although neither party had taken it. In the earlier case of *Re S. (O.C.)* [1904] 2 K.B. 161, where the appellant succeeded in the Court of Appeal on a point of law which he should have taken in the court below, he was given the costs of the appeal but not of the hearing in the court below. Again, in *Borthwick v. Evening News* (1888), 37 Ch. D. 449, a successful appellant was deprived of the costs of the appeal where the court disapproved of his conduct.

This discretion which is vested in the court or judge must, however, be exercised judicially, and what has been written before on this subject in regard to proceedings in the lower court will apply with equal force to appeals to the Court of Appeal. In exercising its discretion, however, the "Court of Appeal shall have power to make such order as to the whole or any part of the costs of the appeal as may be just" (see R.S.C., Ord. 58, r. 4), whilst so far as the costs in the lower court are concerned the Court of Appeal may "give any judgment and make any order which ought to have been made, and . . . make such further or other order as the case may require."

The Court of Appeal will not, however, entertain an appeal from an order of the lower court as to costs only, where those costs have by law been left to the discretion of the court (see s. 31 (1) (h) of the Judicature Act, 1925), except where the appellants have first obtained the leave of the court or judge making the order as to costs, although an appeal may be taken to the Court of Appeal, even without leave, on the question whether or not the judge who made the order had the materials before him upon which to exercise his discretion (see *Civil Service Co-operative Society v. General Steam Navigation* [1903] 2 K.B. 756). In this respect it may be noticed that in the case of *Robertson v. Robertson* (1881), 6 P.D. 119, it was held that it is not an exercise of the discretion vested in him for the judge to award costs on some general principle. The exercise of his discretion must be made in relation to the facts of the particular case.

We have seen that the Court of Appeal may deprive the successful party of his costs in certain circumstances, and may vary an order of the lower court where it considers such variation just and proper. So, also, may it apportion the costs in the lower court in a case where part only of the judgment in the lower court is varied in the Court of Appeal. Thus, in the case of *Jones v. Stott* [1910] 1 K.B. 893, the defendants in an action were successful, but in the exercise of his discretion the learned judge deprived them of their costs, and they appealed against so much of the judgment as dealt with the question of costs. The plaintiffs then entered a cross-appeal, contending that judgment should be entered for the plaintiffs with costs. The Court of Appeal dismissed the defendants' appeal with costs, and also dismissed the plaintiffs' cross-appeal with costs. Separate briefs were not delivered by either party on the appeal and cross-appeal, and the taxing master dealt with the costs on the basis that the plaintiffs were entitled to the whole of their costs, except in so far as they were increased by the notice of cross-appeal, whilst the whole of the defendants' costs should be disallowed except those costs specifically relating to the cross-appeal. Objections to the taxation were lodged, and subsequently a

summons to review was taken out, and the learned judge directed, and his decision was upheld in the Court of Appeal, that the costs of the appeal and the cross-appeal should both be taxed as if they were independent appeals.

The effect of this is that in the case of an appeal and a cross-appeal those items in the respective parties' bills of costs which are common to both the appeal and the cross-appeal must be apportioned "with reference to the actual course taken and time properly occupied on the hearing of the appeals," to quote the direction of the learned judge in the case cited above. The principal items to which this basis of apportionment must be applied are, of course, the solicitors' fees in respect of the briefs to counsel, and counsels' fees in relation thereto.

Further, where there is an appeal from part only of a judgment, and the judgment of the lower court is varied to the extent of that part with costs in relation thereto, and the costs of the lower court have already been taxed and paid, then the Court of Appeal will itself look at the bill of costs and apportion it as between that part of the judgment as to which there had been no appeal and that part which has been varied on appeal. Indeed, this happened in the case of *Re Geipel's Patent* [1904] 1 Ch. 239 (C.A.), where there was an appeal to the House of Lords in a patent action, and the patentee was awarded the costs in the court below in respect of that part of the judgment in which he succeeded in the House of Lords. The costs in the court below had been taxed and paid at the sum of £660 and the House of Lords asked for and itself apportioned the bill as to £125 in connection with this particular phase of the judgment and directed that the sum should be added to the costs of the appeal.

This question of apportioning costs leads to the further question that can arise where there are several parties in an action but an appeal is entered by only one of those parties. The question may then arise as to the incidence of liability for costs of the other parties in relation to the appeal.

Thus, in the case of *Hopgood v. Willan* [1938] 2 All E.R. 196, a plaintiff in a running-down action obtained judgment against three defendants, and one of the defendants appealed, but unsuccessfully. The appellant had served the other two defendants with the notice of appeal and the question arose as to whether these two defendants were entitled to their costs of attending before the Court of Appeal. Formerly, it had been the practice not to allow the costs of any party who had been served with a notice of appeal unnecessarily (see *Ex parte Webster* (1883), 22 Ch.D. 136), and this would have been the position in the above instance but for the fact that under the Law Reform (Married Women and Tortfeasors) Act, 1935, the two defendants who had not appealed would be interested in the question of contribution so that, in fact, they were likely to be affected by the result of the appeal and were thus properly served with a copy of the notice of appeal, and quite rightly appeared at the hearing. This being so, it was held that they were entitled to their costs as against the unsuccessful defendant. This does not seem to have altered the former practice substantially, and the principle of *Ex parte Webster* still seems to stand in cases where it can be shown that a party has been served with a notice of appeal unnecessarily.

The term "costs of appeal" arises frequently, and it may be useful to notice here that this term has been held to mean the extra expenses which have been incurred as a result of the appeal, commencing with the notice of appeal (see *Kevans v. Joyce* [1897] 1 Ir. R. 1). Thus, a case to advise as to whether to appeal against a judgment of the lower court will not normally be allowed as part of the costs of appeal.

We have seen in an earlier article that costs in Admiralty matters, although they do to an extent follow the event, are, particularly in collision damage actions, subject to certain rules which, whilst they do not in any sense hamper the discretion vested in the court or judge by virtue of Ord. 65, r. 1, yet give effect to principles which are peculiar to the subject-matter of such actions. Thus, costs may be apportioned according to the degree of blame attaching to the respective vessels, so that cases may arise where each party is awarded costs in varying proportions. So it is with regard to costs in connection with Admiralty appeals. The matter is entirely within the discretion of the court, but the underlying principle will be that the costs follow the event. Thus, if a vessel is held alone to blame in the court below and the owners appeal and the Court of Appeal finds that both vessels are to blame, then the usual order is that neither party will

have the costs either of the court below or of the appeal (see *Owners of the Canton v. Owners of the Rhesus* [1928] W.N. 214). On the other hand, if both vessels have been held to blame in the court below and the finding is undisturbed by the Court of Appeal, then the costs will probably be awarded to the respondent (see *The City of Manchester* (1880), 5 P.D. 221). In the event of the Court of Appeal finding, in such a case, that both vessels are to blame, but the proportions in which the blame attaches is varied, then the costs of the appeal will normally be awarded to the party whose liability has been reduced (see *The Young Sid* [1929] P. 109).

So much for the incidence of costs in the Court of Appeal. We will consider the amount of the costs likely to result from such an appeal in our next article.

J. L. R. R.

A Conveyancer's Diary

HOTCHPOT ON A PARTIAL INTESTACY

THE common complaint in Lincoln's Inn that there is nowadays practically no litigation on the 1925 property legislation has not, in the past few months, been true so far as the Administration of Estates Act is concerned. In this period we have had the decision of the Court of Appeal in *Re Bradshaw* [1950] Ch. 582, on the meaning of the expression "beneficial interest in real estate" in s. 51 (2), which provides for the devolution, in accordance with the old rules, of realty to which a lunatic was entitled on the 1st January, 1926, and as to which he subsequently dies intestate; the decisions in *Re Ridley* [1950] Ch. 415, and *Re Beaumont*, *ibid.* 462, on the order of application of assets laid down by s. 34 (3); and finally *Re Young* [1951] 1 Ch. 185; 94 SOL. J. 762, a case on the difficult provisions of the Act dealing with partial intestacy, with which I propose to concern myself to-day.

In this case the deceased, who died in 1939, by his will left his residue on trust for his widow for life, and after her death on trust to divide it into seven shares. Five of these shares were given to five named children of the deceased and nothing turned on these shares. Another share was given to the trustees upon discretionary trusts during the life of the deceased's son C for the benefit of C or any child or children of his, with remainder after the death of C to all the children of C who should attain the age of twenty-one years in equal shares. The remaining one-seventh share was given on similar trusts to those declared concerning C's share for the benefit of another of the deceased's sons, H, who, however, had died without issue some two years before the date of the will.

The result of this death was that H's share was undisposed of by the will except for the widow's life interest therein, and on the widow's death in 1948 fell to be distributed in accordance with the provisions of the Act on the footing that the deceased had died intestate as to that part of the residue. Meanwhile, between the dates of the deaths of the deceased and his widow, C died, leaving two children who took a vested interest in the share given for his benefit.

The question which arose concerned the distribution of the property comprising the undisposed-of share given to H. The widow's estate was entitled to a charge for £1,000 with interest from the deceased's death, by virtue of s. 46 (1) (i) of the Act under the principle applied in *Re McKee* [1931] 2 Ch. 145, and there was no difficulty in this respect. Subject to her interest, H's share was held upon the statutory trusts for the deceased's issue who survived the period of distribution,

i.e., it was divisible among the five children of the deceased who survived the period of distribution and the estate of C in equal shares. That was the effect of the imposition of the statutory trusts contained in s. 47 (1) (i) of the Act. These trusts are, however, subject to a qualification concerning hotchpot contained in s. 47 (1) (iii), which provides that "where the property held on the statutory trusts for issue is divisible into shares, then any money or property which by way of advancement or on the marriage of a child of the intestate, has been paid to such child by the intestate or settled by the intestate for the benefit of such child (including any life or less interest . . .) shall, subject to any contrary intention . . . be taken as being so paid or settled in or towards satisfaction of the share of such child or the share which such child would have taken if living at the death of the intestate, and shall be brought into account, at a valuation (the value to be reckoned as at the death of the intestate) . . ." These provisions are then applied to and extended in the case of a partial intestacy by s. 49, which provides that Pt. IV of the Act (which deals with the distribution of intestates' estates) shall have effect as respects any property not disposed of subject to two modifications, one of which is that "the requirements as to bringing property into account shall apply to any beneficial interests acquired by any issue of the deceased under the will of the deceased, but not to beneficial interests so acquired by any other persons."

In view of these provisions the question was whether C's estate was liable to bring into account, under the combined effect of ss. 47 and 49 of the Act, the value of the one-seventh share of the residue settled upon C and his children by the will, to which C's children had become absolutely entitled after the death of the deceased's widow, as a condition of participating in the undisposed-of share. C's personal representatives argued that as, in the events which happened, C himself had not taken the one-seventh share, he had never acquired a "beneficial interest" within the meaning of s. 49, and there was, in consequence, nothing which could be brought into account.

This argument was rejected by Harman, J., who held that C's estate was liable to bring into account the capital value of the share settled upon C and his children by the will before it could participate in the undisposed-of share. The reasons given for this view were as follows. The word "issue" in the phrase "any beneficial interests acquired by any issue of the deceased" in s. 49 did not mean children,

but children or remoter issue: the use of the word "issue" in s. 49 could be contrasted with the use of the word "children" in s. 47 (1) (iii). Any member of a family belonging to any *stirps* had, therefore, to bring into account under s. 49 anything acquired under the will by any other member of the same *stirps*. In the particular case, C and his two children formed the "issue" for the purposes of s. 49, and as the children had taken the share settled upon C and his children under the will they had acquired a beneficial interest which had to be accounted for by C's estate.

The results of this decision may in certain circumstances be rather odd. It is not stated in the report of this case whether C's children were entitled, under C's will or otherwise, to the property representing the share in the undisposed-of share which passed to C's estate; if that were so, it was not inequitable that the persons who eventually took the beneficial interest in the undisposed-of share should bring into account what they had acquired under the will of the deceased. But if C disposed of his residuary estate (which would include the share in the undisposed-of share) to persons other than his children, it would not have been in the interest of C's children to bring into account under s. 49 the share which they took under the deceased's will, with the usual consequence that C's estate could not then have participated in the division of the undisposed-of share at all, and the residuary legatees under C's will would have forfeited this property through circumstances over which they had no control. But as any other result would have produced an inequitable distribution of the deceased's residuary estate, taken as a whole, among his issue, and as in any case the language of the relevant provisions of the Act amply supports (if one may say so with

respect) the learned judge's decision, consideration of the possible effects of this judgment on hypothetical cases is more than usually unprofitable. As it is, another of the dark places in this difficult Act has been illuminated, and we should be grateful for that.

* * * * *

I have had several letters in connection with my recent observations on the meaning of the word "advancement" in this Diary (p. 101, *ante*). Two have raised the same point: does the statutory power (or an express power in like terms) authorise an advancement to assist the education of the person advanced? On this question I have always taken the view that such an exercise of the power is authorised on the strength of *Re Garrett* [1934] Ch. 477. This case is cited in the books on two other points in connection with advancements, and it is not strictly a direct authority on the point; but the summons asked that the trustees might be authorised to raise and pay certain sums for the school fees of an infant beneficiary and other incidental expenses, and when certain difficulties of construction had been got over, Farwell, J., referred the summons back to chambers. None of the counsel in the case argued that the power was not capable of being exercised for the particular purpose of education and I think the fair inference is that such a purpose is within the power. In my opinion, trustees can safely act on *Re Garrett*, but if any trustees have doubts, an application in chambers will resolve them.

Consideration of another interesting point raised by a reader, which has reference to the effect of a consent to an exercise of the power of advancement on a protective life interest, I will have to defer until next week. "A B C"

Landlord and Tenant Notebook

ALTERNATIVE ACCOMMODATION

THE decision in *Cresswell v. Hodgson* (*The Times*, 13th February), referred to in our "Current Topics" of 24th February, invites an attempt to summarise the present law, or so much of it as is usually met with in practice, relating to the "alternative accommodation" ground for possession of controlled premises. I do not propose to discuss those provisions in which certificates of housing authorities may assist the plaintiff to prove his case, but rather the substantive requirements of such a case. When a landlord can rely on this ground, date of purchase does not matter (see *Briddon v. George* [1946] 1 All E.R. 609 (C.A.)), and he may be said, generally speaking, to be in a relatively strong position; but there are, as the authorities have shown, one or two snags.

The requirements to be examined, which are to be found in the Rent, etc., Restrictions (Amendment) Act, 1933, s. 3, can be set out as follows:—

That—

- (i) the court considers it reasonable to make an order for possession;
- (ii) alternative accommodation is available for the tenant or will be available for him when the order takes effect;
- (iii) the accommodation consists either of a dwelling-house to which the Acts apply, or of premises to be let as a separate dwelling which will afford the tenant reasonably equivalent security of tenure;
- (iv) it is reasonably suitable to the needs of the tenant and his family as regards proximity to place of work; and it is otherwise suitable to the means of the tenant

and to the needs of the tenant and his family as regards extent and character.

Discussing these in turn:—

(i) *Reasonableness*.—This is, of course, the "overriding requirement" which has to be fulfilled in every case in which possession is sought of controlled premises. It was said in *Cumming v. Danson* (1942), 59 T.L.R. 70, that the burden of proving reasonableness was lighter in these cases than others; but *Cresswell v. Hodgson* is a reminder that it still has some weight. In *Cumming v. Danson* a county court judge had gone wrong at the outset by treating a case which was based on the alternative accommodation ground as one based on para. (h) of the Schedule, and had held that the plaintiff did not reasonably require the premises claimed for her own occupation. The action was remitted, Scott, L.J., remarking that the measure of reasonableness was smaller in regard to the burden of proof where alternative accommodation was offered. In *Warren v. Austen* [1947] 2 All E.R. 185 the absence of playing ground facilities for five children was, however, held to justify refusal. In *Cresswell v. Hodgson*, the accommodation offered being only just suitable, the county court's decision to withhold an order because the landlord wanted to sell the house, and it would therefore be unreasonable to grant him possession, was upheld. See also *McIntyre v. Hardcastle* under (iv), below.

(ii) *Availability*.—An early decision, *Kimpson v. Markham* [1921] 2 K.B. 157, emphasised the fact that it is no use for a landlord to rely on the fact that a difficult, fastidious, uncoöperative tenant has refused opportunities offered him

if the accommodation is no longer available at the date of the hearing. On the other hand, the scheme of the Acts is such that a landlord claiming possession on quite different grounds might, if he heard of alternative accommodation being available just before the hearing, rely on that availability without having to bring a fresh action.

(iii) *Security of Tenure*.—This requirement does not appear to have produced any reported case; and, since the decontrol provisions introduced by the Rent, etc., Restrictions Act, 1923, ceased to operate, and the Rent, etc., Restrictions Act, 1939, which finally disposed of them, greatly extended the scope of rent control legislation, not much is likely to be heard of it. But accommodation made available as the result of application to a housing authority under Defence Regulation 68CB would not satisfy the requirement.

(iv) *Suitability*.—This is alternative to "similarity as regards rental and extent to the accommodation provided by dwelling-houses in the neighbourhood by any housing authority for persons whose needs as regards extent are similar," etc., of which little is heard, and presents more difficulties than the others. Two general observations may usefully be made.

(a) To come within the provision at all, the accommodation must consist of a single dwelling. Attempts to satisfy the requirement by offering accommodation in separate houses failed (ultimately) in *Sheehan v. Culler* [1946] K.B. 339 (C.A.), in which the landlord had offered his own house, which was occupied by himself and his family, plus (the house being inadequate in extent) a room in a house a few doors away, then occupied by his brother, who was a member of his household; and in *Schwyn v. Hamill* (1948), 92 SOL. J. 71 (C.A.), in which what was offered was living-room, kitchen and bathroom, etc., in one part of a building which had been erected by the Admiralty, plus a bedroom in another part, both under the same roof, but separated one from another by another dwelling.

(b) A fallacy entertained by many tenants (and, at one time, by at least one county court judge) is that the accommodation cannot be suitable if it does not fairly correspond to that of the dwelling-house claimed. In theory, indeed, it might have to be better; i.e., if that claimed were inadequate, too expensive, too far from work, etc. The true position was pointed out, *obiter*, by Asquith, L.J., in *Warren v. Austen*, *supra*: the judge would be applying an entirely wrong criterion if he said: "All I have to do is to compare the two sets of premises, and if," etc.

Coming to the sub-requirements, that of proximity to place of work has produced no authority except *Dakyns v. Pace* [1948] 1 K.B. 22, deciding, in the case of an honorary organiser of educational concerts, that the "work" need not be paid work. It is, of course, to be noted that the needs of members of the tenant's family have to be considered, but what "family" means or does not mean will be discussed later.

As regards means, it was held in Scotland, in *Cimorelli v. Reid* (1926), 42 Sh. Ct. Rep. 104, that the fact that the tenant could buy the suggested accommodation (with vacant

possession) on mortgage will not entitle the landlord to possession, though the property is otherwise suitable.

The needs test has been a more fruitful source of difficulty. It is twofold: extent and character have to be considered. Rather less has been heard about character, though in a case reported in the *Estates Gazette* for 22nd March, 1946, *Greenhaugh v. Tilson*, the old-fashioned character of a house was considered a relevant factor. As regards extent, an objection that the accommodation would not contain all the tenant's furniture was classified first under this sub-head by Tucker, L.J., in *McIntyre v. Hardcastle* [1948] 1 All E.R. 696, though later he pointed out that the requirement of reasonableness might call for consideration of this factor.

What we more often hear about is that the dwelling-house claimed comprises what might be called some income-producing accommodation which the accommodation said to be available lacks. It was said in *Wilcock v. Booth* (1920), 89 L.J.K.B. 864, that the absence of a shop was irrelevant to the question of suitability, though the tenant had and carried on a shop on the premises sought to be recovered; and *Middlesex County Council v. Hall* [1929] 2 K.B. 110 definitely decided the point in favour of the landlords: the defendant in that case carried on a teashop where he was, and no facilities were available for that business on the premises put forward. Admittedly, nothing appears to have been said about the effect on his income; and in *Briddon v. George* [1946] 1 All E.R. 609 (C.A.), in which a "no-garage" objection was disallowed, the possibility of a tenant being a commercial traveller who used his car for business purposes does not appear to have been mooted.

The complaint that there would be no room for lodgers at present entertained had been dealt with in the same way (*Thompson v. Rolls* [1926] 2 K.B. 426). True, means were not specifically mentioned; but Rowlatt, J.'s "the reason why the defendant objects is that she makes a profit out of letting the two rooms" shows us what it was all about.

Rather more difficult is the question of the scope of the expression "family," which also occurs in the Increase of Rent, etc., Restrictions Act, 1920, s. 12 (1) (g) (rights on intestacy). Husbands qualified quite early (*Salter v. Lask* (No. 2) [1925] 1 K.B. 584) under the latter, and a series of later decisions extended protection to brothers and sisters (*Price v. Gould* (1930), 46 T.L.R. 411 (C.A.)), adopted children (*Brock v. Wollams* (1949), 93 SOL. J. 319), a niece by marriage (*Wigley v. Leigh* (1950), 94 SOL. J. 129 (C.A.)), but last December produced two exclusions in the shape of first cousins (*Langdon v. Horton* (1951), 95 SOL. J. 89 (C.A.)) and a *de facto* only wife (*Tinkham v. Perry* (1951), 95 SOL. J. 107 (C.A.)). In those cases death had separated grantee and claimant; it may be that separation during lifetime is not always unwelcome, for s. 3 (3) of the 1933 Act appears to have yielded only two authorities. In *Standingford v. Probert* (1949), 93 SOL. J. 726 (C.A.), it was held that while a son who married became the head of a new family, he did not thereby cease to be a member of his mother's family; he and his wife were among those to be considered in relation to suitability. Whether a lodger was such a member was left undecided; but in *Darnell v. Millwood* [1951] 1 All E.R. 88 (C.A.) a married couple employed by a widower, the wife acting as housekeeper, were held not to be members of his family for this purpose.

R. B.

His Honour G. C. ALLSEBROOK has been appointed Chairman of Cumberland Quarter Sessions.

Mr. G. G. BAKER has been appointed Recorder of Smethwick.

Mr. W. M. DAVIES, K.C., has been appointed Deputy Chairman of Glamorgan Quarter Sessions.

Mr. A. J. LONG, K.C., has been appointed Recorder of Wolverhampton.

Mr. T. W. W. GOODERIDGE has been appointed Clerk to Surrey County Council and Mr. W. W. RUFF has been appointed deputy clerk.

HERE AND THERE

LANCASTER CHANCERY

THE Duchy of Lancaster, time-honoured in its 600 years, missed, at its recent sixth centenary celebrations, the presence of His Majesty the King, whom the men of Lancashire toast as their Duke. The extra-territorial privileges of this once wild and remote corner of England, which the Industrial Revolution transformed into one of the most prosperous regions of the island, are among the strangest curiosities of our history. The County Palatine has always gone its own way and held its own traditions with a stubborn tenacity. After the Reformation it remained, in spite of penal proscriptions, resolutely Catholic. In the Civil War it stood for the King. After the arrival of William of Orange it clung intransigently to its Jacobite loyalties. Its legal arrangements developed a character all their own. It has its own Chancery Court and till about the eighteen-seventies had its own Common Law Court too, so that the assizes were held under a commission of gaol delivery only. To-day, owing to the volume of business to be transacted, the assizes of the county are unlike those of any other and between Liverpool, Manchester and, of course, Lancaster, the sittings are to all intents and purposes continuous. The Chancery Court sits at Liverpool, Manchester and sometimes Preston, but it is a couple of centuries or so since it sat at Lancaster. It supports a Bar of its own and by consent it takes in quite a lot of work from the neighbouring counties.

INDIA TO MERSEYSIDE

THERE was a time, and that not so very many years ago, when the Vice-Chancellor of the County Palatine was a busy London silk who sat in his London chambers to deal with northern judicial business after High Court hours, but that's all changed now and the Vice-Chancellorship is a full-time job of very nearly Chancery Division status to the outside world and a cherished manifestation of autarchy in the county of the Red Rose. For anyone who likes to be king of his own castle it must be a singularly desirable appointment. Sir Leonard Stone, now genially and comfortably settled into it, travelled from Lincoln's Inn to Lancashire, rather in the manner of the man in Chesterton's famous song, by the improbable route of Bombay, where he was Chief Justice just long enough to enjoy life in India but not long enough to

be worn down by the climatic and other stresses. When the gorgeous East decided to be held in fee no longer and the British judges returned to place their imperial experience at the service of Mother England, the contrast between India's coral strand and the shores of the Mersey must have been as sharp as it was interesting. The dispossessed judiciary had, of course, been compensated for loss of office with (I am told) a saving clause that, should they thereafter hold office under the Crown, the compensation should revert to the Treasury. It underlines the genuine autonomy of the status of the County Palatine that office held in the Duchy is apparently officially recognised as not being office under the Crown. Other manifestations of its judicial independence are the Liverpool Court of Passage and the Salford Hundred Court.

DURHAM CONTRAST

It is odd what different fates the accidents of history impose on similar institutions. The County Palatine of Durham, far more ancient than that of Lancaster and going back almost certainly to the Conqueror, still has a Chancellor, an Attorney-General and a Solicitor-General, but its significance as a front-line defence against the Scots ebbed away long ago by effluxion of time, and economic circumstances failed to redress the balance and increase the stature of its court as they did for its Merseyside sister. Even a century and a half ago there was more ceremony than business to the appointment. Sir Samuel Romilly, who accepted the Chancellorship in 1805, was not a little taken aback by his reception when, late one night in September, he arrived at Durham Castle to take up the office. The great bell sounded; servants hurried out with lights. With bows and compliments from a crowd of attendants the weary traveller was conducted in state through illuminated galleries to meet the officers of his court in the drawing-room. "My lord" and "Your honour" ushered in every phrase that was uttered. So sudden a transformation into a great man and the lord of an old feudal palace, reminded me of Sancho's government of Barataria and still more of Sly, the drunken cobbler. Two tedious days of "mimic grandeur" he found "disgusting and painful" and far more arduous than the not very exacting court work.

RICHARD ROE.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL]

Legal Aid in Operation

Sir,—My experience of the conduct of many legal aid cases of various types under several legal aid committees has been much different from that of your correspondent "Caliban" [p. 136, *ante*].

Whilst the membership of my own particular legal aid committee consists of almost the whole of the local solicitors, bringing in a high proportion of conveyancing men, this spreads the burden evenly over the profession and enables sub-divisions of the committee to meet at weekly intervals for certifying purposes with the result that applications are dealt with expeditiously. The local secretaries, both whole time and part time, are all qualified men.

Except that the local committees normally require the applicant's statement to be corroborated by at least one other witness, it is not my experience that they expect cases to be fully prepared. Local committees in this area will usually grant a certificate, even in an extremely hazardous case, wherever there appears to be a reasonable prospect of success, but in a few isolated cases where an over-cautious local committee has refused a certificate, the area committee has readily reversed the decision on appeal. I know of one very doubtful case where the area committee, on appeal, directed the issue of a certificate limited to the issue of writ, thus enabling the applicant to have his case inquired into by a solicitor on the panel and the advice of counsel taken without immediately committing the legal aid fund to full scale proceedings. This is an expedient which might

be commended for more frequent adoption in cases presenting some difficulty.

The main drawbacks of the scheme are to be found in its financial provisions. The contribution required of an applicant with the average family and in decent regular employment is usually high, and although payment is generally directed to be by instalments after an initial lump sum payable within twenty-eight days, the amount of the lump sum assessed by the committee has proved quite prohibitive in at least one case of mine. The scheme is, however, of the utmost benefit to applicants in personal injury cases who are incapacitated from following their employment.

The preparation of the four- or six-column bill is tedious. Although one is instructed to include in the solicitor and client column only such items as are additional to the party and party items, it is in practice necessary to enter many items in both columns to avoid the danger of falling between two stools. Whilst the taxing officials are in my experience willing to grant reasonable allowances as between solicitor and client, there is a dangerous tendency, where costs are being taxed both between party and party and solicitor and client, for the party and party costs to be scaled down on the footing that the assisted person's solicitor will get paid his proper costs out of the legal aid fund and he has no need to worry about getting his full pound of flesh from the other side.

Leeds, 1.

G. MALCOLM HEBBLETHWAITE.

REVIEWS

The Law of Quasi-Contracts. By JOHN H. MUNKMAN, LL.B., of the Middle Temple and the North-Eastern Circuit, Barrister-at-Law. 1950. London: Sir Isaac Pitman & Sons, Ltd. 30s. net.

Readers of the academic legal writings of the last twenty years would not agree that this book breaks new ground. This much can be said, however, that it is concerned with a branch of English law which many practitioners, at all events, still disdain as a separate study. Henceforth their excuse is no more, for it is for them that the work is chiefly intended. The case law is fully set out with due emphasis on the modern decisions in a didactic, not closely digested, style of presentation.

Mr. Munkman, indeed, keeps the practical nature of his mission well before him, though in treating a subject such as this he could hardly have avoided betraying some views on its theoretical aspect. A firm historical background is sketched in in the opening chapter, and the author neglects no opportunity of deriding the fiction (with which our forbears managed very nicely) of a contract implied by law in cases of quasi-contract. On the other hand, he is rightly cautious in the use of current catchwords such as "unjust benefit" and "unjust enrichment" which have supplanted the former theory on the lips of the schoolmen. But the bulk of the book consists of a careful analysis of the different manifestations in which the inhabitants of this no-man's land between contract, tort and equity are to be encountered. The mere enumeration of no less than nineteen different types of liability will surprise many readers. Each is accorded its share in the central chapters of the book.

The format is handsome, but have the publishers considered the inconvenience to the reader who attempts to study a text from such glossy paper in direct artificial light?

Whitworth on Profits Tax. By PETER E. WHITWORTH, B.A., of the Middle Temple, Barrister-at-Law. 1950. London: Jordan & Sons, Ltd. 20s.

This is a very useful and reliable short book on profits tax, which contains not only a concise exposition of the subject but also all the statutory enactments. As the author was an Inspector of Taxes before he recently began practising at the Bar, the presentation is practical, with plenty of examples in figures to illustrate the points of principle. The arrangement of the book is clear and methodical and it is well produced, both as to paper and type.

It cannot be regarded as completely comprehensive, even if only on the ground of length, which has entailed considerable compression. It presupposes a knowledge of income tax such as an accountant would have who prepares income tax computations, and confines itself to explaining the further adjustments necessary in order to calculate the profits for profits tax purposes, the special reliefs applicable, and the method of arriving at the amount of profits tax payable. Within this compass it seems to cover all the main points relating to profits tax, for instance, "control" of companies (but only in two pages); treatment of directors' remuneration; losses; abatement; distributions; the treatment of principal and subsidiary companies, and of special types of business undertakings. But unless the reader had this background of knowledge he might have difficulty in understanding the subject for the first time from this book. It is, however, very well suited to the reader for whom doubtless it is intended (as judged by the inclusion of questions set in the final examinations for accountants). As an illustration of the compression of the subject-matter it should be noted that out of the total of 251 pages only 69 pages have been given to the author's exposition, 12 pages are taken up by examples, and the remainder (pages 83 to 239) are used to set out the statutory enactments. For the same reasons of space, no doubt, references only are given to the important legal decisions, but it would have been more valuable

if a short statement of the facts and *ratio decidendi* of the decisions could have been set out in the text.

The Marriage Law of England. By J. C. ARNOLD, LL.B., of the King's Inns, Dublin, and of the Inner Temple, Barrister-at-Law. 1951. London: Staples Press, Ltd. 12s. 6d. net.

This is an excellent book. It does not deal with the subject of divorce beyond pointing out that if there has been a prior marriage it must be cleared away effectively before another valid marriage can take its place. The law of England relating to marriage involves a detailed consideration of the requisites of a valid marriage, that is to say a marriage that would be regarded as valid in England though it may have been solemnized anywhere in the world. It is interesting to note the alteration in the attitude of the law of England towards persons who contract polygamous marriages in countries where polygamy is allowed. Once upon a time such a union would not have been recognised as constituting a valid marriage in England, but further reflection upon the consequences of such an attitude has led to a different view being adopted in recent times. The subject of valid marriages, and of voidable—as distinct from invalid—marriages is admirably dealt with by the author. The subject of legitimacy, both at common law and as affected by the Legitimacy Act, 1926, is clearly and concisely discussed. Finally, the author deals with the Marriage Act, 1949, which consolidates the statutory requirements governing the law of solemnization of marriages in England and Wales. In a chapter entitled "Key to the Marriage Act, 1949," the author analyses and collects the principal provisions of this statute with great clarity, and the statute itself is printed in the appendix at the end of the book. The author is to be commended on his skill in writing a book which is useful both to lawyers and laymen. While strictly technically correct, the simplicity with which the subject has been treated deserves to give this work a popular appeal.

Batt's Law of Master and Servant. Fourth Edition.

By J. CROSSLEY VAINES, LL.M., of Gray's Inn and the Northern Circuit, Barrister-at-Law. 1950. London: Sir Isaac Pitman & Sons, Ltd. 30s. net.

This book, written by His Honour Judge Batt, and now revised by Mr. Vaines, is perhaps the most satisfactory general account of the subject. Practising lawyers will find here all they need to know about such topics as length of notice, wrongful dismissal, trade secrets and breach of confidence, restrictive covenants, the Truck Acts, and the National Insurance (Industrial Injuries) Act.

On questions of tort and crime, however—chapters 10, 11, 12 and 16—lawyers will prefer to refer to the standard textbooks. Chapter 12, in particular (liability in tort for accidents at work), compresses an immense subject into so short a space that it could not be relied on in practice; and in the section on *volenti non fit injuria* undue prominence is given to the discredited case of *Thomas v. Quartermaine*. The present reviewer does not like the specimen pleadings under the Factories Act, but this is a question of taste.

In short, from the point of view of the legal reader, this book would be better limited to the contract of master and servant and its statutory incidents: but the discussions of tort and crime may be useful to a wider public.

The introductory chapter tries to give too much information on collateral matters such as the Rent Restrictions Acts and the judicial system: it should be cut down and simplified. The discussion of whether a director is a servant or not shows a tendency to "generalise on the facts," also noted in other passages: surely—while a director is not *ipso facto* a servant—a managing director or other director employed under a contract of service may well be a servant.

NOTES OF CASES

COURT OF APPEAL

ACCOUNTANTS' NEGLIGENCE: CLAIM IN TORT

Candler v. Crane, Christmas & Co., Ltd.

Cohen, Asquith and Denning, L.JJ.

26th January, 1951

Appeal from Lloyd-Jacob, J.

The plaintiff invested money in a company which failed. He did that on the faith of accounts, found to be through negligence defective and deficient, prepared by the defendants as accountants to the company. Having lost his money, the plaintiff claimed damages from the accountants for negligence. Lloyd-Jacob, J., dismissed the action, and the plaintiff appealed. (*Cur. adv. vult.*)

ASQUITH, L.J., said that the defendants had argued that in the conditions existing in the present case the defendants were under no duty sounding in tort to the plaintiff to take care that their representation of facts should be true. They relied on *Le Lievre v. Gould* [1893] 1 K.B. 491, which was conclusive in their favour, unless it could be shown to have been overruled or to be distinguishable. The plaintiff's case was that the rule laid down by the majority in *Donoghue v. Stevenson* [1932] A.C. 562, necessarily involved the consequence that (even where fraud, contract and fiduciary relationship were absent) A would be liable to B for any negligent misrepresentation on which B had acted to his detriment, provided always that there existed between A and B the necessary degree of so-called proximity. His lordship discussed *Derry v. Peek* (1889), 14 App. Cas. 337; *Cann v. Wilson* (1888), 39 Ch. D. 39; *No. 10 v. Ashburton* [1914] A.C. 932. Lord Atkin in *Donoghue v. Stevenson*, *supra*, referred pointedly to *Le Lievre v. Gould*, *supra*, without a hint or suggestion that it was wrongly decided or that his memorable formula was inconsistent with it. Did that formula invalidate *Gould's* case, *supra*? The material passages of Lord Atkin's speech, if read literally and without regard to the qualifying effect of its context or of the *subjecta materies*, might be taken to comprehend not only conduct causing physical injury to person or property through setting a certain kind of chattels in motion or in circulation, but also conduct of any kind, through any means (including negligent misstatements) causing *damnum* of any kind recognised by the law, whether physical or not, to anyone who could bring himself within Lord Atkin's definition of a "neighbour." He could not believe so broad an application was intended by Lord Atkin. The formula had been applied to physical injury caused by negligent failure to repair a lift (*Haseltine v. Daw* [1941] 2 K.B. 343) and a motor car (*Denny v. Supplies and Transport Co., Ltd.* [1950] 2 K.B. 374; 94 Sol. J. 403), or by the negligent adoption of an unsafe system of working. It had, he thought, never been applied where the damage complained of was not physical. It was more than questionable whether Lord Thankerton and Lord Macmillan, who agreed with Lord Atkin on the result in *Donoghue's* case, *supra*, had accepted the broad formula about "my duty to my neighbour" which he laid down, as well as the narrow proposition limited to the liability of the negligent manufacturer of a chattel which reached the consumer without an intermediate examination and injured him. He (Asquith, L.J.) was of opinion that *Donoghue's* case, *supra*, neither reversed nor qualified the principle laid down in *Gould's* case, *supra*, and that the action must fail.

COHEN, L.J., read a judgment agreeing that the appeal failed.

DENNING, L.J., dissenting, said that persons such as accountants, surveyors, valuers and analysts, who made reports on which other people—not their clients—relied in the ordinary course of business, were under a duty to use care in statements apart from a contract in that behalf. Their duty was not merely one to take care in their reports, but to use care in their work which resulted in their reports. They were engaged in a calling which required special knowledge and skill. Accountants owed that duty not only to their clients, but to any third person to whom they showed the accounts or to whom they knew that their employer was going to show the accounts so as to induce him to invest money or take some other action on them. That duty could not be extended so as to include strangers of whom they had heard nothing and to whom their employer without their knowledge might choose to show their accounts. The duty of care only extended to those transactions for which the accountants knew their accounts were required. Whether an accountant

would be liable if he prepared his accounts for the guidance of a specific class of persons he would not say. His conclusion was that a duty to use care in statement was recognised by English law, and that its recognition did not create any dangerous precedent when it was remembered that it was limited in respect of the persons by whom and to whom it was owed and of the transactions to which it applied. In his opinion accountants owed a duty of care not only to their own clients, but also to all those who they knew would rely on their accounts in the transactions for which those accounts were prepared.

Appeal dismissed.

APPEARANCES: Neil Lawson (*Edwin Coe & Calder Woods*); John Foster, K.C., and P. Quass (*Ashurst, Morris, Crisp & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

BUILDING: ALLEGED INVALIDITY OF LICENCE

Woolfe v. Wexler

Cohen, Asquith and Birkett, L.JJ. 21st February, 1951

Appeal from Judge Earengy, K.C., sitting as a deputy official referee.

The defendant, the owner of a building, wished to let part of it to a tenant who required that certain work should first be executed to the premises. The plaintiff, a builder, entered into a contract with the defendant for the carrying out of the work, and it was provided by the tenancy agreement that the defendant and the tenant should share the cost of the work. The defendant caused his architect to apply on the prescribed form for a licence covering the proposed work, and the name of the tenant was inserted as that "of applicant, i.e., person paying the cost of the proposed work." The only inaccuracies suggested by the defendant to exist in that application were that the tenant never came into direct contractual relationship with the plaintiff builder, and was therefore not directly liable to him for any sum; and that in any event the tenant was, by his agreement with the defendant, only liable for half the cost of the work. The licence having been granted, the work was carried out, the tenant paid part of the cost to the plaintiff builder, but the defendant refused to pay him the balance due. The plaintiff having sued the defendant for that sum, the latter contended that the work had been done unlawfully in that either the licence was vested in the tenant who had not paid for the whole cost of the work so that the licence was invalid and the work unlawful, or the licence had been transferred from the tenant to the defendant, which was a breach of one of its conditions attracting a penalty under Defence Regulation 56A (8) which, it was contended, also rendered the work illegal.

By art. (2) of reg. 56A of the Defence (General) Regulations, 1939, "... the carrying out ... of any work ... on a building ... shall be unlawful except in so far as there is in respect thereof a licence granted by the Minister." By art. (8): "If any condition attached [under art. (7)] to [a] ... licence granted for the purposes of this regulation is contravened or not complied with ... the person at whose expense ... the work is carried out ... and ... the person ... carrying out the work ... shall each be guilty of an offence. ..."

The referee gave judgment for the plaintiff for the sum claimed and the defendant appealed. (*Cur. adv. vult.*)

COHEN, L.J., reading the judgment of the court, said that, in the absence of any express provision in the regulation prohibiting the doing of work unless the name or names of the persons at whose expense the work was being done were stated in the licence, the licence was not invalidated and the work not rendered illegal by the fact that the defendant's name did not appear in it. It would not be right to imply such a requirement in construing a penal provision. That appeared from *London & North Eastern Railway Co. v. Berriman* [1946] A.C. 278, at p. 313. The plaintiff was accordingly entitled to recover the balance of the cost of the work which he had done. The case was plainly outside the mischief which the regulation was framed to prevent, in that the work was authorised and was done to meet the requirements of the person to whom the licence had been granted, and the cost was paid in part by the licensee. With regard to the defendant's alternative contention, assuming that the licence had been transferred from the tenant to the defendant (which the evidence did not establish), that breach of a condition of the licence only attracted a penalty under art. (8), and did not *per se* invalidate the licence and render the work unlawful.

That subject had been discussed in *Bostel Bros., Ltd. v. Hurlock* [1949] 1 K.B. 74; 92 SOL. J. 361. The appeal failed.

Appeal dismissed.

APPEARANCES: *H. Lester (Thomas V. Edwards); Alan Campbell (Howard, Kennedy & Co.).*

(Reported by R. C. CALBURN, Esq., Barrister-at-Law.)

"FACTORY": CHEMIST'S SHOP

Joyce v. Boots Cash Chemists (Southern), Ltd.

Lord Goddard, C.J., Singleton and Denning, L.JJ.
2nd March, 1951

Appeal from Slade, J. (94 SOL. J. 536; 66 T.L.R. (Pt. 2) 635).

The plaintiff was employed as a porter at a branch shop of the defendant company. While carrying a box of medicines upstairs he tripped on an edge of linoleum, fell and suffered injury in respect of which he brought this action. He contended that the premises were a factory within the meaning of the Factories Act, 1937; that consequently by s. 25 (1) of the Act it was the duty of the defendants to ensure that all floors, steps and stairs were of sound construction and properly maintained, and by subs. (2) to ensure that a substantial hand-rail was provided for every staircase; that by s. 26 (1) it was the defendants' duty to provide a safe means of access to every place at which the plaintiff had to work; and, in the alternative, that the defendants were liable for negligence at common law. Slade, J., held that the shop was not a factory within the Act of 1937, so that the claim based on alleged breach of statutory duty failed; that even if the shop had been a factory no breach of statutory duty causing the accident would have been established; and that the defendants had not been guilty of negligence at common law. The plaintiff appealed.

LORD GODDARD, C.J., said that the case raised a simple question of fact. He did not wonder that Slade, J., had come to the conclusion that the piece of linoleum tacked down at the top of a stair did not constitute breach of statutory duty by the defendants or at common law. Hundreds of people, including the plaintiff himself, had passed over that linoleum, and in the five and a half years it was there had been no accident or complaint whatever. The plaintiff, on the occasion in question, had done what hundreds of people had done before: he had tripped. Because it was possible that such an accident might happen at a certain place it did not follow that the state of affairs there existing was a danger. Slade, J., came to the conclusion on the evidence that the place could not be called dangerous, and, on that evidence, he (Lord Goddard, C.J.) agreed with him. The judge had rightly refused to hold that the place was made dangerous by the fact that the linoleum strip had not, as had been suggested should have been done, been carried back four feet from the stair. The appeal should be dismissed.

SINGLETON and DENNING, L.JJ., agreed.

After a discussion on the question of costs, SINGLETON, L.J., observed that the result of the case, since the plaintiff was now an assisted person against whom no contribution towards costs had been ordered, was that the State paid his costs and that the successful defendants could not recover theirs from anyone.

LORD GODDARD, C.J.: And the defendants have had the privilege of paying for the transcript of the shorthand note at a cost of over £100. I do not know what the result of this is going to be.

Appeal dismissed.

APPEARANCES: *S. R. Edgedale, K.C., and J. G. K. Sheldon (Shaen, Roscoe & Co.); R. M. Everett and D. P. Croom-Johnson (Seaton, Taylor & Co.).*

(Reported by R. C. CALBURN, Esq., Barrister-at-Law.)

LEGAL AID: THE QUESTION OF APPEAL

Schreiner v. Schreiner

Lord Goddard, C.J., Singleton and Denning, L.JJ.
2nd March, 1951

At the conclusion of a discussion on the costs of the above appeal (which does not call for report), LORD GODDARD, C.J., addressed officials of The Law Society and the Legal Aid Committee, who had attended the court at his request to give information about the procedure in legal aid cases.

LORD GODDARD, C.J., said that he hoped that the committee would realise that they would have to consider in every case whether it was a proper case in which to grant legal aid in the Court of Appeal. His lordship continued: "We do not under-

estimate the committee's difficulties. Parliament has put a very difficult task on the committee. It seems to me that in many cases before the court there has been nothing at all in the appeal, and several appeals have been dismissed without counsel for the respondents being called on. I think that it would be desirable for the committee to see a transcript of the shorthand notes of the judgment, if possible. We think it desirable to say that experience of the working of the Legal Aid Act has shown that the authority which makes rules under the Act should consider, if it is possible to do so under the Act, whether the same procedure should not obtain now as obtained before the Act was passed, namely, that, before an assisted person can appeal, leave should be obtained from the trial judge or the Court of Appeal, so that the court may be satisfied that there is an appealable point."

(Reported by R. C. CALBURN, Esq., Barrister-at-Law.)

KING'S BENCH DIVISION

DIVISIONAL COURT

ADULTERATED MILK: ANALYST'S CERTIFICATE

McCulloch v. Hannam

Lord Goddard, C.J., and Devlin, J.
19th January, 1951

Case stated by Dorset justices.

A public analyst certified that he had analysed a sample of milk produced by the defendant, a dairy farmer, and that "as a result of my analysis I am of opinion that . . . it consisted of . . . added water at least 13 parts per cent." The farmer did not require the analyst to be called as a witness, and, that being the case, by s. 81 (1) of the Food and Drugs Act, 1938, the certificate "shall be sufficient evidence of the facts stated therein." The justices dismissed the information against the farmer on the ground that they thought that the analyst's statement about the added water was an expression of opinion and not admissible as evidence under s. 81 (1) unless he were called to give evidence. The prosecutor appealed.

LORD GODDARD, C.J., said that the justices had taken too narrow a view of the effect of s. 81 of the Act of 1938. They said that, in spite of the evidence to the contrary given by the defendant, they would have found that there was added water if they could have accepted the analyst's certificate as evidence. The analyst found that the sample contained "milk not more than 87 parts per cent.: added water at least 13 parts per cent." The justices thought that unless the analyst were called to give evidence, that was not enough, because it was a statement of opinion and not of fact that the sample consisted of added water of at least 13 parts per cent. But everything which the analyst stated with regard to his analysis was a matter of opinion: it could not be more than that. It was rebuttable, and the statutory form obviously contemplated that the analyst would give his certificate in that form. The case would go back to the justices with an intimation that in the opinion of the court the analyst's certificate was admissible as evidence in full and *prima facie* showed that there were at least 13 parts per cent. of added water in the milk.

DEVLIN, J., agreed. Case remitted.

APPEARANCES: *E. S. Fay (Booth & Blackwell, for C. P. Brutton, Dorchester).* The defendant did not appear and was not represented.

(Reported by R. C. CALBURN, Esq., Barrister-at-Law.)

DIVISIONAL COURT

DANGEROUS DRIVING: NOTICE OF INTENDED PROSECUTION WRONGFULLY ADDRESSED

Rogerson v. Edwards

Lord Goddard, C.J., and Humphreys and Devlin, JJ.
26th January, 1951

Case stated by Cambridge justices.

The defendant was charged with the dangerous and careless driving (Road Traffic Act, 1930, ss. 11 (1), 12 (1)) of a lorry of which a company called Greenwoods (Contractors), Ltd., of Bury Road, Ramsey, were the registered owners. The notice of intended prosecution required by s. 21 (c) was sent to "Messrs. Greenwoods, Bury Road, Ramsey." In the same road there was also the address of a company called Greenwoods Transport, Ltd. The justices being of opinion that the notice as addressed was not addressed to the registered owners of the lorry and that s. 21 had not been complied with, dismissed the

informations without entertaining them on the merits. The prosecutor appealed.

LORD GODDARD, C.J., said that if a defendant took the point that s. 21 of the Act of 1930 had not been complied with he must adduce evidence in support of that objection. The burden was not on the prosecutor to show that he had complied with the section (see proviso (ii)). No evidence had been adduced to show that Greenwoods (Contractors), Ltd., had not been served with a notice or that it had not been sent to them. The justices were therefore bound to proceed with the hearing. Moreover, the prosecutor was certainly guilty of no lack of reasonable diligence in ascertaining in time the name of the registered owner: he had applied to the registration authority; and he (his lordship) was inclined to think that the case therefore fell within proviso (i) (1) to the section, although the prosecutor had not shown that he did not know the name and address of the defendant. But it was unnecessary to express a concluded opinion on that point. The case must go back to the justices with a direction that they must hear it out.

HUMPHREYS, J., agreed.

DEVLIN, J., agreeing, said that if the proceedings had been regularly conducted no difficulty would have arisen. The burden of proof being on the defendant, he would have had to call some properly authorised representative of Greenwoods (Contractors), Ltd., to say that they had not received the notice, because in no other way could he discharge the burden of proving that the notice was neither served nor sent. It could not be inferred from the fact that the notice was incorrectly addressed that it was neither served nor sent. Case remitted.

APPEARANCES: Garthy Moore (Waterhouse & Co., for *Few and Kester*, Cambridge); I. H. Jacob (C. Hampton Vick, for *Sidney J. Peters*, Cambridge).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

WORKMEN'S COMPENSATION: EMPLOYERS' CLAIM TO INDEMNITY

Post Office v. Official Solicitor

Barry, J. 30th January, 1951

Action.

In 1933 a postman, while carrying out his duties for the plaintiffs, his employers, was permanently injured in the leg through the negligence of the driver of a motor car. The plaintiffs' claim against the driver for loss of the postman's services was settled. No question of workmen's compensation arose because the plaintiffs continued to pay the postman his full wages. In 1944 the negligent driver died. In 1947 the postman retired, after which he claimed compensation and was paid the amount relevant to his 25 per cent. disability. The plaintiffs in this action claimed an indemnity under s. 30 of the Workmen's Compensation Act, 1925, against the driver's estate. He had died intestate, and letters of administration were granted to the Official Solicitor limited to defending the action. The claim against the estate was based on s. 1 of the Law Reform (Miscellaneous Provisions) Act, 1934.

By that section, "(1) . . . on the death of any person after the commencement of this Act all causes of action subsisting against or vested in him shall survive against, or . . . for the benefit of his estate . . . (4) Where damage has been suffered by reason of any act . . . in respect of which a cause of action would have subsisted against any person if that person had not died before or at the same time as the damage was suffered, there shall be deemed . . . to have been subsisting against him before his death such cause of action in respect of that act or omission as would have subsisted if he had died after the damage was suffered."

BARRY, J., said that it was common ground that each payment of compensation which the plaintiffs made gave rise to a new and separate cause of action for an indemnity under the Act of 1925, and that no cause of action existed until the payment of compensation had been made. As no compensation had been paid before the driver's death in respect of the period after the postman's retirement, it was argued for the defendant that there was no cause of action subsisting against the driver at the time of his death. The plaintiffs' contention, on the other hand, was that s. 1 (1) of the Act of 1934 must be read in the light of s. 1 (4), which gave a wide and artificial meaning to the word "subsist," and that the plaintiffs' cause of action was "subsisting" in that wide sense. It was further contended for the defendant that the plaintiffs could not avail themselves of s. 1 (4) because the payments of compensation could not properly be described

by the words "where damage has been suffered" in s. 1 (4). But it seemed to him (his lordship) that the facts of the present case were wholly covered by s. 1 (4) of the Act of 1934, because the word "damage" in that Act was used in the sense of any pecuniary or other injury, and when the plaintiffs paid compensation to the postman they suffered damage as a result of the act or omission of the driver. The facts here were of the kind envisaged in s. 1 (4) of the Act of 1934. When the "act" or "omission" first took place it did not cause any injury or damage; and, until it caused injury or damage, no cause of action arose. It was not until after the driver's death that the plaintiffs suffered any injury or damage. But when in 1947 they suffered injury by having to pay compensation the effect of s. 1 (4) was to make the cause of action notionally subsisting at the time of the driver's death. The plaintiffs were entitled to indemnity in respect of those payments, and to a declaration that they should be indemnified against any subsequent payments which they might have to make up to 6th September, 1950.

APPEARANCES: *Rodger Winn* and *I. S. Warren* (Solicitor, Post Office); *A. S. Diamond* (Official Solicitor).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

DIVISIONAL COURT

MOTOR COACH: BREACH OF CONDITION

Reynolds v. G. H. Austin & Sons, Ltd.

Lord Goddard, C.J., Humphreys and Devlin, JJ.
16th February, 1951

Case stated by Stone (Staffordshire) justices.

A local women's guild organised a trip to the seaside, and arranged with the defendant company that they should convey in their motor-coach a party of twenty-eight at a fixed price per person. A few days before the date fixed a few seats remained vacant, which it was financially necessary for the guild to fill. Their organiser therefore caused to be exhibited in a shop an advertisement giving particulars of the trip, and stating: "Few tickets left. Apply within." The defendants, whose place of business was in a town some miles away, had no knowledge that any such advertisement of the trip had been exhibited. The trip took place, and the defendants were charged with having used their motor-coach as an express carriage without a road service licence by virtue of the breach of condition (b) of s. 25 (1) of the Road Traffic Act, 1934. The justices dismissed the information, and the prosecutor appealed. By s. 72 (1) of the Road Traffic Act, 1930, a motor vehicle may not be used as an express carriage except under a road service licence. By s. 72 (10): "If any person uses a vehicle or causes or permits it to be used in contravention of this section . . . he shall be guilty of an offence." By s. 61 (1) (b) an express carriage is a motor vehicle "carrying passengers for hire or reward at separate fares . . ." By s. 61 (2): ". . . Provided that a vehicle used on a special occasion for the conveyance of a private party shall not be deemed to be a vehicle carrying passengers for hire or reward at separate fares by reason only that the members of the party have made separate payments which cover their conveyance by that vehicle on that occasion." By s. 25 (1) of the Road Traffic Act, 1934, a vehicle is deemed to be used on a special occasion in a way not constituting it an express carriage requiring a road service licence where certain conditions are fulfilled including: "(b) the journey must be made without previous advertisement to the public of the arrangements therefor."

(Cur. adv. vult.)

LORD GODDARD, C.J., said that the rule that, where there was an absolute prohibition against the doing of an act, *scienter* formed no part of the offence and the absence of it afforded no defence to the accused person, did not extend to the case of a defendant charged with having done an act lawful in itself but which had become unlawful as the result of some action entirely unknown to him by some other person not his servant or agent. The doctrine that if there were an absolute prohibition and the prohibited act were done a penalty was incurred was not applicable to the case where the prohibited act was not that of the defendant, but of some person over whom he had no control and for whom he had no responsibility. For the defendants to be rendered guilty of contravening s. 72 (10) of the Act of 1930 by reason of the breach which had occurred of condition (b) in s. 25 (1) of the Act of 1934, the breach must have been committed by them or to their knowledge. As it had in fact been committed without their knowledge, and in circumstances of which they had no means of knowing, they were not

guilty of contravening s. 72 (10) by virtue of the breach of condition. *Scienter* was an essential ingredient in an offence caused by breach of condition (b), as it would be also in the case of a breach of condition (c) or (j), because those conditions were ones breach of which could be committed by persons whom the owner of the vehicle could not control. The appeal failed.

HUMPHREYS, J., read a judgment agreeing.

DEVLIN, J., reading his judgment, said that a man might be made responsible for the acts of his servants, or even for defects in his business arrangements, because it could fairly be said that by such sanctions citizens were induced to keep themselves and their organisations up to the mark. But if a man were punished because of an act done by another whom he could not reasonably be expected to influence, or control, the law would be engaged, not in punishing thoughtlessness or inefficiency, but in punishing on the most convenient victim. To punish the defendants in the circumstances proved would have achieved no object save to make them underwriters of the good behaviour of the community at large. Where the punishment of an individual would not promote the observance of the law either by that individual or by others whose conduct he might reasonably be expected to influence, then, in the absence of clear and express words in the relevant statute, such punishment was not intended. He agreed that the appeal failed.

Appeal dismissed.

APPEARANCES: *J. P. Ashworth (Treasury Solicitor)*; *D. Karmel, K.C.*, and *J. M. Davies (Beale & Co., London and Birmingham)*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PROBATE, DIVORCE AND ADMIRALTY DIVISION

DIVISIONAL COURT

JUSTICES: SUBMISSION OF NO CASE

Baverstock v. Baverstock

Lord Merriman, P., and Wallington, J.
18th January, 1951

Appeal from justices.

The appellant husband sought discharge of a maintenance order on the ground of his wife's adultery. The only evidence which he adduced was that of the man with whom he alleged that the adultery had taken place. The wife's representative

submitted that there was no case to answer, and the justices dismissed the husband's application without putting the wife's representative to his election to stand on that submission or to call evidence. The husband appealed.

LORD MERRIMAN, P., said that the wife's advocate should clearly have been called upon to state whether he elected to stand upon his submission without calling evidence, or to call evidence. The justices' future conduct would then have been guided by the way in which the advocate decided to conduct the case. If he had said that he was going to call evidence, they should have said that they would not rule then, but that they would wait until they had heard all the evidence. They should then have directed themselves that as between the two conflicting witnesses (if at the end of the wife's evidence there was any conflict) one was an accomplice, and they should have directed themselves properly as regards the reception of the evidence of an accomplice. But they did not do that. If, on the other hand, the advocate said that he intended to stand on his submission, then the justices would have been entitled to consider whether, notwithstanding the fact that the witness was an accomplice, they thought, on a proper direction to themselves, that he was telling the truth, and to act accordingly. Unfortunately they did not do that either. They could, of course, have taken the third course of disbelieving the witness and stopping the case. In the result they had confused those two matters without a proper direction to themselves either about the election to which the advocate should have been put, or about the propriety, but not the absolute legal necessity, of corroboration of the evidence of an accomplice. They said, first, that they did not believe the witness. Had that been all, it might have been difficult to upset their finding. But they also said that they could not accept the uncorroborated evidence of an accomplice as sufficient evidence of adultery. That appeared to have been the substance of the matter: they were declining to accept the man's evidence because as a matter of law they had been led to believe that in no circumstances whatever could they accept it. The case must be remitted to a different panel of justices for rehearing.

WALLINGTON, J., agreed. Case remitted.

APPEARANCES: *J. Sofer (Savory, Pryor & Blagden, for R. L. W. Rons & Co., Bexley Heath)*; *N. Lermont (T. G. Baynes & Sons, Dartford)*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

SURVEY OF THE WEEK

HOUSE OF LORDS

PROGRESS OF BILLS

Read First Time :—

Overseas Resources (Development) Bill [H.C.] [8th March.
Reserve and Auxiliary Forces Training Bill [H.C.]

[6th March.

Read Second Time :—

Alkali, etc., Works Regulation (Scotland) Bill [H.C.] [8th March.
Export Guarantees Bill [H.C.] [8th March.
Rag Flock and Other Filling Materials Bill [H.L.]

[6th March.

Workmen's Compensation (Supplementation) Bill [H.C.] [8th March.

Read Third Time :—

Livestock Rearing Bill [H.C.] [8th March.
Lloyd's Bill [H.L.] [8th March.
Oxford Motor Services Bill [H.L.] [8th March.
Town and Country Planning (Amendment) Bill [H.C.] [8th March.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read Second Time :—

British Transport Commission Bill [H.C.] [7th March.
Matrimonial Causes Bill [H.C.] [9th March.

B. QUESTIONS

VALUATION FOR RATING

MR. DOUGLAS JAY stated that £25,263 had so far been paid to valuers in private practice for their services in valuations for the new rating purposes. Valuers doing this work for the Valuation Office of the Inland Revenue were also permitted to

act for ratepayers in appeals against assessments made by the district valuer or other private valuers on other properties in the same area. [6th March.

RIGHTS OF WAY (MAINTENANCE)

MR. BARNES said he was aware that instances occurred on metalled roads of public rights of way being maintained by owners of the land which they traversed, although they were joined to "highway authority roads" at each end. LORD WINTERTON asked whether legislation would be introduced compelling highway authorities to maintain such roads where, after public inquiry, general usage of such road could be proved. MR. BARNES in reply said that some of these cases could be dealt with under existing statutes, but they arose in different ways and could not all be treated alike. This was one of a number of features of highway law which could usefully be considered as part of a general consolidation and revision, but he did not think the matter was so urgent or important as to justify special legislation. In reply to MR. HYND, who asked whether the Minister would give an assurance that any road maintained by a public authority would be taken over completely by that authority, MR. BARNES said he would not like to commit himself too far in that direction. [5th March.

OCCUPATIONAL LEVEL CROSSINGS

MR. BARNES said he had received a full and far-reaching report from the British Transport Commission on the question of occupational level-crossings. The problem of the legal position of people using such crossings was one of very long standing, involving issues of considerable complexity. If the Commission's report were accepted legislation would be required to alter the respective rights and obligations of the Commission, the highway authorities and others who had an interest in the crossings. The matter required careful consideration and until this was completed he would not be in a position to make a statement. [5th March.

JUSTICES OF THE PEACE ACT

Mr. GEOFFREY DE FREITAS said that no date had yet been fixed for bringing ss. 19 and 22 of the Justices of the Peace Act, 1949, into force. [5th March.]

Mr. CHUTER EDE said that no dates had yet been fixed for the coming into force of the various provisions of Pt. III of the Act. [5th March.]

COMPANIES ACT, 1948

Mr. RHODES declined a suggestion that s. 164 of the Companies Act, 1948, should be amended to ensure that when an investigation was ordered into the affairs of a company at the request of a minority of the shareholders, the names of the complainants and the nature of their charges were made known to the directors of the company concerned. He did not think it would be desirable to place any such obligation on the Board of Trade. The Board of Trade frequently communicated to the directors of the company the grounds of an application before appointing an inspector, and in some cases this might render an investigation unnecessary. There were, however, cases in which notification would be undesirable. When an inspector had been appointed, it should be left to him to decide the course of the investigation. In either case it would be undesirable to cause further dissension in the company by requiring the disclosure of the names of the applicants. [6th March.]

EXCHANGE OF TENANCIES

Mr. HUGH DALTON said he hoped that private landlords would do their utmost to facilitate voluntary exchanges of tenancies and thus prevent the necessity of considering legislation. [6th March.]

MAINTENANCE ORDERS (RECIPROCITY)

Mr. CHUTER EDE said that a draft convention for the recognition and enforcement of maintenance orders was shortly to be discussed at the Social Commission of the United Nations. The arrangements under the Maintenance Act, 1920, which obtained in the Commonwealth territories depended on the similarity of the laws in force in these territories, and the question whether these arrangements or any alternative arrangements could be made in respect of other countries having dissimilar laws raised very difficult problems and would require very careful consideration. Reciprocity depended on the other party being willing to reciprocate and in matters such as this it was sometimes very difficult to arrive at such an arrangement. With regard to the States of Guernsey, whilst they would no doubt be easier to deal with than foreign countries, he could assure members that the Channel Islands were very anxious to preserve all the rights of asylum which they possessed. [8th March.]

TIED COTTAGES, KENT

The MINISTER OF AGRICULTURE stated that the cottage certificate procedure did not apply to tied cottages in respect of which no contract of tenancy existed. During the five years 1946-50, the Kent Agricultural Executive Committee considered 533 applications and issued 266 certificates to farmers in connection with proposed applications under the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933, for court orders for the possession of cottages required for employees. He had heard it alleged that farm workers were inadequately represented on these committees and that certificates were far too easily granted, but he was satisfied that the procedure, which refused about half of the applications, had worked out to the benefit of the agricultural worker. [8th March.]

LAND VALUES (DEPRECIATION CLAIMS)

Mr. DOUGLAS JAY said that by the end of February 828,000 claims had been received in England and Wales for depreciation of land values in England and Wales under Pt. VI of the Town and Country Planning Act, 1947. About one-ninth of these had been finally agreed or otherwise determined. Claims so far determined were not a fair cross-section of the claims received, and it would be misleading at this date to publish the amount. [7th March.]

STATUTORY INSTRUMENTS

Air Navigation (Amendment) Order, 1951. (S.I. 1951 No. 319.)
Arbroath Corporation Water Order, 1951. (S.I. 1951 No. 316 (S.13).)

Assizes (Birmingham October Assize) Order, 1951. (S.I. 1951 No. 334.)

In order to ensure the despatch of civil business at Birmingham this Order provides for the holding of an additional assize in

October in any year in which it may be found expedient. This assize is to be known as the Birmingham October Assize, and is not to prevent the holding concurrently of the Autumn Assize at any other town on the Midland Circuit.

Brush and Broom Wages Council (Great Britain) Wages Regulation (Amendment) Order, 1951. (S.I. 1951 No. 336.)

Carpets (Maximum Prices) (Amendment No. 4) Order, 1951. (S.I. 1951 No. 312.)

Coal Distribution (Amendment) Order, 1951. (S.I. 1951 No. 347.)

Controlled Surplus Stores—Clocks and Watches (Revocation) Order, 1951. (S.I. 1951 No. 348.)

Cotton Waste Reclamation Wages Council (Great Britain) Wages Regulation (Amendment) Order, 1951. (S.I. 1951 No. 310.)

County Court Districts (Miscellaneous) Order, 1951. (S.I. 1951 No. 346.)

This order discontinues the holding of the Romsey County Court and distributes its jurisdiction between the Andover, Salisbury, Southampton and Winchester county court districts. Certain parishes are taken from the Edmonton County Court and distributed between the Bishop's Stortford, Brentwood and Hertford county court districts. A number of other minor changes of jurisdiction are also made.

Defence Regulations (No. 1) Order, 1951. (S.I. 1951 No. 318.)

Diversion of Highways (Buckinghamshire) (No. 2) Order, 1951. (S.I. 1951 No. 366.)

Diversion of Highways (Buckinghamshire) (No. 3) Order, 1951. (S.I. 1951 No. 359.)

Dominica (Legislative Council) (Electoral Provisions) Order in Council, 1951. (S.I. 1951 No. 330.)

Enrolment of Deeds (Change of Name) (Amendment) Regulations, 1951. (S.I. 1951 No. 377 (L.1).)

As to these regulations, see p. 162, *ante*.

Exchange Control (Authorised Dealers) Order, 1951. (S.I. 1951 No. 349.)

Exchange Control (Authorised Depositories) Order, 1951. (S.I. 1951 No. 350.)

Export of Goods (Control) (Amendment No. 4) Order, 1951. (S.I. 1951 No. 357.)

Flax and Hemp Wages Council (Great Britain) Wages Regulation (Amendment) Order, 1951. (S.I. 1951 No. 341.)

Great Ouse River Board Area Order, 1950. (S.I. 1951 No. 342.)

Grenada (Legislative Council) (Electoral Provisions) Order in Council, 1951. (S.I. 1951 No. 328.)

Hampshire Area (Conservation of Water) Order, 1951. (S.I. 1951 No. 355.)

Hannfield Water Order, 1951. (S.I. 1951 No. 343.)

House of Commons (Redistribution of Seats) Order, 1951. (S.I. 1951 No. 320.)

House of Commons (Redistribution of Seats) (No. 2) Order, 1951. (S.I. 1951 No. 321.)

House of Commons (Redistribution of Seats) (No. 3) Order, 1951. (S.I. 1951 No. 322.)

House of Commons (Redistribution of Seats) (No. 4) Order, 1951. (S.I. 1951 No. 323.)

House of Commons (Redistribution of Seats) (No. 5) Order, 1951. (S.I. 1951 No. 324.)

House of Commons (Redistribution of Seats) (No. 6) Order, 1951. (S.I. 1951 No. 325.)

House of Commons (Redistribution of Seats) (No. 7) Order, 1951. (S.I. 1951 No. 326.)

House of Commons (Redistribution of Seats) (No. 8) Order, 1951. (S.I. 1951 No. 327.)

Imported Canned Fish (Amendment) Order, 1951. (S.I. 1951 No. 345.)

London—Edinburgh—Thurso Trunk Road (Doncaster By-Pass) (Revocation) Order, 1951. (S.I. 1951 No. 337.)

London—Fishguard Trunk Road (Neath By-Pass Bridges) (Amendment) Order, 1951. (S.I. 1951 No. 300.)

Meat Products and Canned Meat (Amendment) Order, 1951. (S.I. 1951 No. 314.)

Milk and Meals (Amending) Regulations, 1951. (S.I. 1951 No. 340.)

National Health Service (Joint Ophthalmic Services Committees) (Scotland) Amendment (No. 2) Order, 1951. (S.I. 1951 No. 353 (S.15).)

Probation Grant (Deduction) (Scotland) Regulations, 1951. (S.I. 1951 No. 344 (S.14).)

Representation of the People (Adaptation of Enactments) Order, 1951. (S.I. 1951 No. 369.)

Retention of Cables and Mains under and over Highways (Rutland) (No. 1) Order, 1951. (S.I. 1951 No. 362.)
Retention of Cables and Mains under and over Highways (Suffolk) (No. 1) Order, 1951. (S.I. 1951 No. 360.)
Saint Vincent (Legislative Council) (Electoral Provisions) Order in Council, 1951. (S.I. 1951 No. 329.)
Stopping up of Highways (Derbyshire) (No. 2) Order, 1951. (S.I. 1951 No. 364.)
Stopping up of Highways (Durham) (No. 1) Order, 1951. (S.I. 1951 No. 361.)
Stopping up of Highways (East Suffolk) (No. 1) Order, 1951. (S.I. 1951 No. 365.)
Stopping up of Highways (Shropshire) (No. 1) Order, 1951. (S.I. 1951 No. 338.)

Stopping up of Highways (Somerset) (No. 2) Order, 1951. (S.I. 1951 No. 363.)
Stopping up of Highways (Warwickshire) (No. 2) Order, 1951. (S.I. 1951 No. 339.)
Sugar Confectionery and Food Preserving Wages Council (Great Britain) Wages Regulation (Amendment) Order, 1951. (S.I. 1951 No. 311.)
Superannuation (English Local Government and Isle of Man) Interchange Rules, 1951. (S.I. 1951 No. 309.)
Transit of Horses Order, 1951. (S.I. 1951 No. 335.)
Utility Apparel (Maximum Prices and Charges) (Amendment) Order, 1951. (S.I. 1951 No. 296.)
Warrington Water Order, 1951. (S.I. 1951 No. 354.)

NOTES AND NEWS

Honours and Appointments

The King has been pleased to signify his intention of appointing the Right Honourable JOHN CLARKE LORD MACDERMOTT, M.C., a Lord of Appeal in Ordinary, to be Lord Chief Justice of Northern Ireland in the place of Sir James Andrews, Baronet, deceased.

Mr. J. A. LAVERACK, assistant solicitor to Reading Corporation, has been appointed assistant solicitor to Berkshire County Council.

The Nuffield Foundation have announced the award of a Home Civil Service Fellowship for 1951 to Mr. T. B. F. RUOFF, assistant land registrar, to study land registration problems in Australia and New Zealand and, possibly, in certain African colonies.

Mr. A. B. THOMAS has been appointed clerk to Forden Rural Council.

Mr. E. P. THOMAS, clerk to the Caernarvon borough magistrates, has been appointed clerk to the Caernarvonshire magistrates also.

Mr. R. H. K. WICKHAM has been appointed clerk to Gipping Rural District Council.

Miscellaneous

The Law Society announce the following special prizes for 1950: Scott Scholarship, W. M. Pybus; Broderip Prize for Real Property and Conveyancing, P. G. Root; Clabon Prize, J. B. E. Forrestall; Robert Innes Prize, R. P. Pennington; Maurice Nordon Prize, P. F. Copping; Local Government Prize, A. N. Mundy; John Marshall Prize, A. J. Quinton; Justices' Clerks' Society's Prize, P. D. Fanner; Samuel Herbert Easterbrook Prize, R. P. H. Walter; Timpron Martin Prize (Liverpool), S. Brayde; Birmingham Law Society's Bronze Medal, R. P. Pennington; City of London Solicitors' Company's Prize, N. A. Cox; City of London Solicitors' Company's Grotius Prize, W. M. Pybus; Mellersh Prize, P. F. Copping; Wakefield and Bradford Prize, G. W. Priestley; Alfred Syrett Prize, R. Kellett.

LEGAL AID AND ADVICE ACT, 1949

MATRIMONIAL CAUSES

The *Law Society's Gazette* for March contains the following statement:—

Certain doubts have arisen regarding the interpretation of reg. 14 of the Legal Aid (General) Regulations, 1950. Some guidance was given in the notes on procedure on taxation [94 Sol. J. 818] with regard to practice in the Supreme Court Taxing Office. The Council have been in communication with the Senior Registrar with regard to matrimonial causes, and he has expressed the opinion that—

1. No prior authority from an area committee is required—
 - (a) To instruct an interpreter.
 - (b) To obtain a translation of a marriage certificate.
 - (c) To call a medical inspector or inspectors in medical nullities at the hearing of the case where the court has ordered a medical inspection by a medical inspector or inspectors.
 - (d) To bespeak a copy of the medical inspector's filed report.
 - (e) To offer at the hearing of a cause the evidence of an inquiry agent.
 - (f) To offer at the hearing of a cause the evidence of fact of the doctor treating or regularly attending the party (including a doctor giving treatment at a hospital) concerning the nature of the malady of the party and the treatment given in the

normal course of his practice, even though in the course of such evidence the witness may give some evidence of his opinion.

(g) To obtain similar evidence from a witness's doctor to support an application for leave to take evidence by affidavit.

2. Prior authority from an area committee is required—

(a) To obtain an opinion from, or tender the evidence of, a foreign lawyer for the purpose of proving a foreign marriage or to give evidence on foreign law.

(b) To obtain a report from, or tender the evidence of, a handwriting expert.

(c) To obtain a report from, or tender the evidence of, a specialist or other doctor not treating or regularly attending the party, but who is consulted with a view to obtaining an expert opinion in support of the party's case.

(d) To obtain a report from, or tender the evidence of, a medical superintendent in insanity cases.

The Senior Registrar has also expressed the opinion that it is not necessary to apply for the Area Committee's authority under reg. 14 (3) (e) of the Legal Aid (General) Regulations, 1950, before filing a reply to a defence and cross-petition.

LEEDS SPRING ASSIZE, 1951

The Commission Day for the Leeds Spring Assize has been altered from Tuesday, 3rd April, to Tuesday, 10th April, 1951. The circuit paper recently published should be amended accordingly.

SOCIETIES

The 75th annual general meeting of the BRADFORD INCORPORATED LAW SOCIETY was held at the Law Library, Bradford, on Wednesday, 7th March, 1951, when the following officers were appointed: President, Mr. Harry B. Connell; Senior Vice-President, Mr. Herbert Duxbury; Junior Vice-President, Mr. J. A. W. Smith; Joint Hon. Secretaries, Mr. Geoffrey H. Hall and Mr. Stanley Ackroyd.

The SHROPSHIRE LAW SOCIETY held its first dinner since 1938 in Shrewsbury on Monday, 26th February last, when among the guests were Mr. Justice Morris, Mr. T. G. Lund (Secretary of The Law Society), Lieut.-General Sir Oliver Leese, Mr. E. J. T. Matthews (Secretary of the West Midland Association of Law Societies) and Mr. J. Tumin (Clerk of the Assizes). Presiding was Mr. Hugh P. Morgan (President).

The UNION SOCIETY OF LONDON will hold a Ladies' Night Debate in Niblett Hall, Inner Temple, on Tuesday, 20th March, 1951, at 8 p.m. Motion: "That this House approves the record of the present Government," proposed by Lord Pethick-Lawrence, opposed by The Marquess of Reading, K.C. Mr. R. G. Middleton (ex-President) will speak third and Mr. R. W. Orme (ex-President) will speak fourth.

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